



## RESOLUTION No. 2013-3062

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**A RESOLUTION AUTHORIZING A HARDSHIP REQUEST FOR WATER  
SERVICE TO 4001 AND 4213 NE ASPEN WAY**

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### RECITALS:

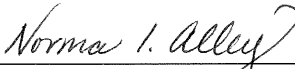
1. On June 4, 2013, the property owner of 4001 and 4213 NE Aspen Way submitted a written request, attached as Exhibit "A", for water service from the City of Newberg for the two existing residential homes, as shown on the vicinity map attached as Exhibit "B".
2. Chapter 13.15 of the Newberg Municipal Code (NMC) authorizes the Newberg City Council to approve hardship connections to the City's water system provided certain criteria are met. The applicant prepared written findings relative to the criteria, which are attached as Exhibit "C". City staff has reviewed the written findings and concur with the applicant that both aforementioned properties meet the hardship request criteria as outlined in NMC 13.15.
3. The granting of the hardship request has no significant financial impact on the City of Newberg.
4. Upon approval of the hardship request the city attorney, in coordination with the city engineer and city manager, will prepare a written contract for signing and recording by each property owner. A draft copy of the city standard written contract is attached as Exhibit "D".

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

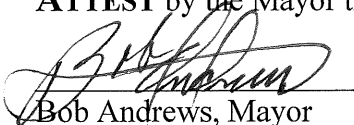
1. The City Council hereby approves the water hardship petition request in Exhibit "A" to the properties shown on the vicinity map in Exhibit "B" and based on the applicant's written findings in Exhibit "C". A recorded written contract shall be required for each of the aforementioned properties, similar to Exhibit "D". Exhibits "A", "B", "C" and "D" are hereby adopted and by this reference included.
2. The city manager is authorized to execute all necessary documents related to granting the water hardship request. All documents shall be approved as to form and content by the city attorney.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: August 6, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 5<sup>th</sup> day of August, 2013.

  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 8<sup>th</sup> day of August, 2013.

  
Bob Andrews, Mayor

June 4, 2013

Honorable Bob Andrews  
Mayor of the City of Newberg  
414 E. First ST.  
PO Box 970  
Newberg, OR 97132

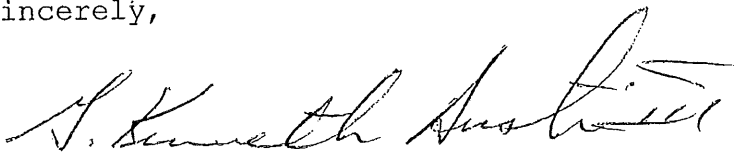
Mr. Dan Danicic  
City Manager of the City of Newberg  
414 E. First ST.  
PO Box 970  
Newberg, OR 97132

Re: Hardship water connection for 4213 NE Aspen Way

Gentlemen;

I am the owner of a house located at 4213 N. Aspen Way, Newberg, Oregon. The house is a single family dwelling that I offer for rent. Water for the house presently comes from a well that has "gone bad". The level of sulfur bacteria in the well has risen to the level that "shocking" the well with chlorine is no longer an option. The smell from the water makes it impossible to drink, and very unpleasant to use for washing purposes. Further the water is causing extreme discoloration of the fixtures. City Resolution 2012-3000 approved hardship water connections for 3620, 3629, 3705, and 4000 NE Aspen Way. My property is easily accessible to the water line that supplies those houses. I hereby petition the City of Newberg for a hardship water connection. I fully expect to pay System Development Charges and any other costs necessary to facilitate the hookup. I further understand that the water provided by the city is for household use only; any livestock that may be pastured on the property will continue to be provided water from the well.

Sincerely,



G. Kenneth Austin III  
Somerset Ventures III LLC  
PO Box 1060  
Newberg, OR 97132

June 4, 2013

Honorable Bob Andrews  
Mayor of the City of Newberg  
414 E. First ST.  
PO Box 970  
Newberg, OR 97132

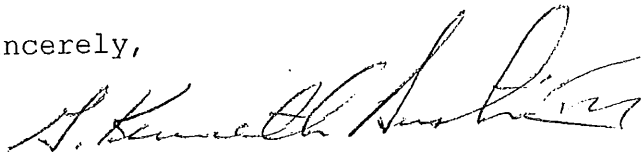
Mr. Dan Danicic  
City Manager of the City of Newberg  
414 E. First ST.  
PO Box 970  
Newberg, OR 97132

Re: Hardship water connection for 4001 NE Aspen Way

Gentlemen;

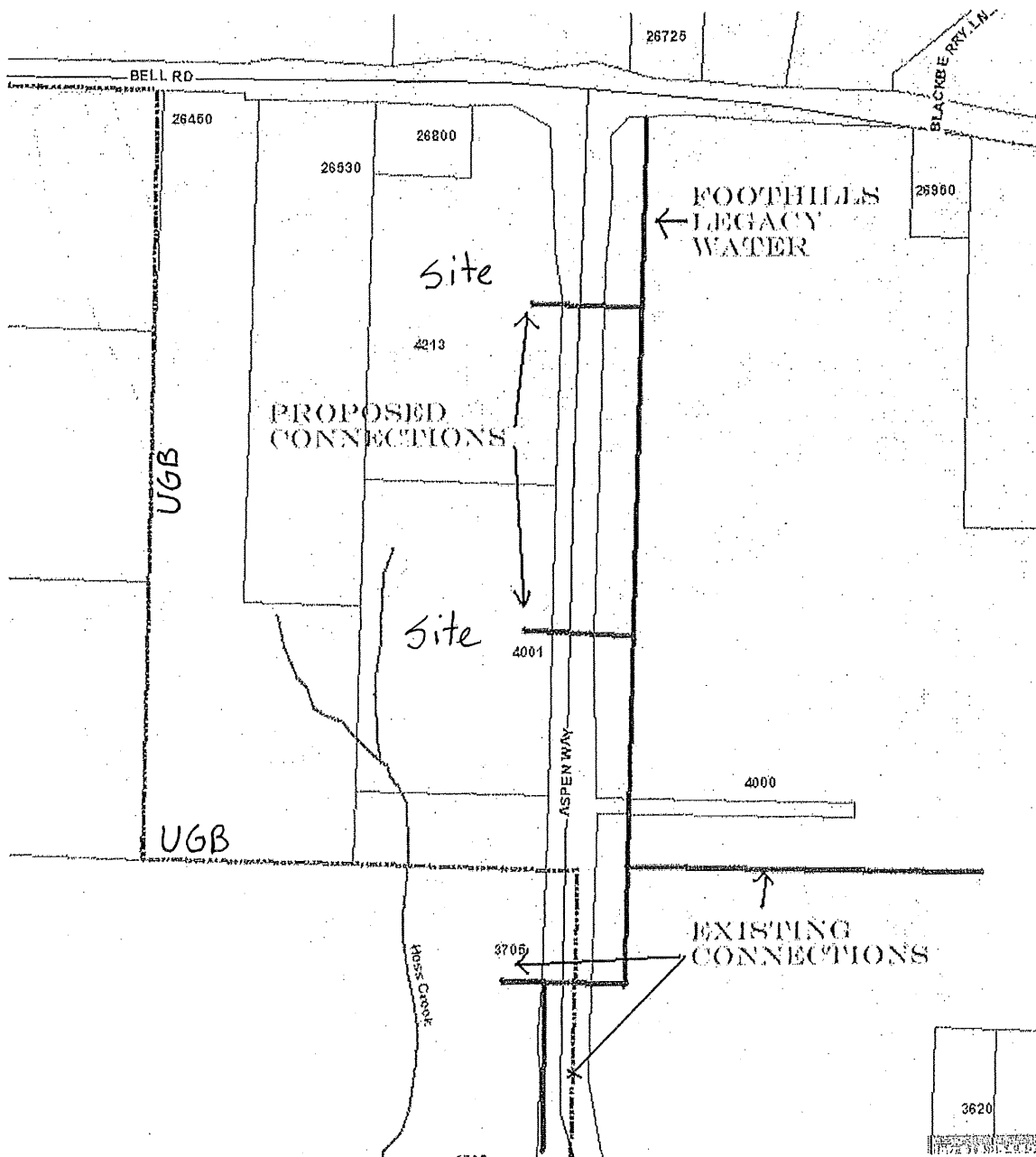
I am the owner of a house located at 4001 N. Aspen Way, Newberg, Oregon. The house is a single family dwelling that I offer for rent. Water for the house presently comes from a well that has "gone bad". The level of sulfur bacteria in the well has risen to the level that "shocking" the well with chlorine is no longer an option. The smell from the water makes it impossible to drink, and very unpleasant to use for washing purposes. Further the water is causing extreme discoloration of the fixtures. City Resolution 2012-3000 approved hardship water connections for 3620, 3629, 3705, and 4000 NE Aspen Way. My property is easily accessible to the water line that supplies those houses. I hereby petition the City of Newberg for a hardship water connection. I fully expect to pay System Development Charges and any other costs necessary to facilitate the hookup. I further understand that the water provided by the city is for household use only; any livestock that may be pastured on the property will continue to be provided water from the well.

Sincerely,



G. Kenneth Austin III  
Rain Dance Ranch LLC  
PO Box 1060  
Newberg, OR 97132

## EXHIBIT B Vicinity Map



**WRITTEN FINDINGS**  
**G. Kenneth Austin III Hardship Request**

**TITLE 13 PUBLIC UTILITIES AND SERVICES**

*13.15.110 Additional users outside city.*

*A. Notwithstanding the provisions of this chapter relative to water service to users outside the city limits, no new or additional water connection for the purpose of providing water to a user situated outside the corporate limits of the city shall be permitted, save and except the connections as are in use or are ready for use on or before the last-mentioned date.*

**Response:** An exception is authorized under the provisions of 13.15.120 in the case of demonstrated hardship. The two properties owned by Mr. Austin that he is requesting exceptions for are all experiencing degradation of their well systems. An increase in iron bacteria in the water is making it increasingly hard for residents to use.

*B. No new water users shall be connected to group customer lines, and no new single residential users shall be connected after the last-mentioned date, it being the intention of this amendment that the city shall not serve or supply water to any additional users outside the city limits save and except those then in service or ready for service.*

**Response:** User is requesting exception to this section under section 13.15.120..

*C. The words "ready for use" and "ready for service," as used in this section, shall be taken to mean that the building or structure wherein the water is to be used shall have been constructed up to the point that all framing and roofing and all exterior siding, windows and exterior doors are completed, and all plumbing is roughed in and ready for installation of plumbing fixtures.*

**Response:** This section does not apply as the structures are already in existence.

*D. The city recorder is directed to require the individual, firm or organization in charge of each group customer line outside the corporate limits of the city to file with the recorder a sworn statement setting forth the name and address of each water user served through their respective group customer lines and presently connected therewith.*

**Response:** A recorded agreement for each property owned by Mr. Austin will be prepared by the city attorney outlining the public improvements that may be needed and the necessary public waterline easements, as described in section 13.15.120.D.5 below.

*E. The recorder may require such additional information as the recorder shall see fit to be furnished in connection with the reports. The city recorder shall report to the city council all group customer lines and all responsible individuals who shall not furnish such a statement and report within the time hereinabove required.*

**Response:** Reporting will not be needed as Mr. Austin agrees to furnish the city recorder with any additional information that the recorder sees fit to require.

*F. All additional connections to the group customers' lines after the effective date of the ordinance codified in this chapter, whether or not in service, shall be promptly reported to the recorder when ready for service. [Ord. 1398, 5-17-65. Code 2001 § 52.11.]*

**Response:** Additional connections shall be reported when they are made.

*13.15.120 Exceptions due to hardships.*

*An exception to NMC 13.15.100 may be granted by the city council in cases of hardship. The following process shall be used in determining whether the exception shall be granted, and the criteria shall be strictly applied with the burden of proof upon the applicant:*

*A. Eligibility. The applicant must meet the following criteria:*

*1. The new or additional water connection can be used only to supply water to an existing structure and will not be used to allow any new development.*

**Response:** No development is proposed. Both properties have existing structures.

*2. Annexation of the property upon which the structure is located is not immediately practical.*

**Response:** Annexation of the two parcels owned by Mr. Austin into the city is not possible at this time as the properties are located outside of the urban growth boundary. Refer to Exhibit B, Vicinity Map for a location of the properties.

The recorded agreements described in 13.15.120.D.5 below will set forth terms for annexation of each property into the city.

*B. Hardship Determination. A request for a new or additional water connection due to hardship shall be accompanied by evidence of the following:*

*1. A genuine hardship exists due to quality and/or quantity of water for domestic consumption.*

**Response:** The existing properties have a genuine hardship with the state of their current wells. As the underground aquifers in the vicinity of the two properties have very poor water quality, and the State of Oregon has restricted the quantity of water that can be pumped from the groundwater aquifer in the area due to declining groundwater levels.

*2. All other alternatives have been investigated and are not economically feasible.*

**Response:** Drilling additional wells would not guarantee an improvement in water quality. The Foothills District legacy water line runs very close to the two structures and offers the most economical solution.

*3. The dwelling to be served is in close proximity of existing services, either private or public, and the granting of the additional connection would not overburden existing lines, either private or public, or overburden the city's water supply.*

**Response:** The addition of the properties to the city springs water system will not overburden the city's water supply or system, as the spring system has more than adequate capacity.

*C. Application for Hardship. A request in letter form for a hardship exception to NMC 13.15.100 shall be made to the city council. The request shall be accompanied by a statement and evidence to be used in the determination. The request shall be reviewed and a recommendation made to the city council by the public works department prior to the city council's consideration of the matter. A granting of the request for an exception can be made by the city council; provided, that all the conditions stated in subsection (B) of this section do exist.*

**Response:** Exhibit A, submitted to the City on (enter Date), is the signed petition prepared by the property owner requesting connection to the City water system. The statement and evidence for use in the determination has been discussed in a meeting with Mr. Austin and City Staff on 4-3-13. The staff recommendation is to approve the water hardship request by Mr. Austin. All of the conditions listed in subsection (B) above have been met.

*D. Conditions of Hardship. Any exception granted shall be subject to the following conditions:*

*1. The owner of the property shall agree to pay the full cost of extending services to the parcel with all services meeting city standards and including all water connection fees and water system development charges.*

*2. The owner of the subject property agrees to annex to the city at such time as annexation is legally possible and is requested by the city. At the time of annexation, the property owner shall pay all system development charges then in effect, except wastewater, which shall be assessed in accordance with Chapter 13.10 NMC.*

*3. Water shall be for domestic purposes only and no water granted under this exception shall be permitted for agricultural use.*

*4. A written agreement as to the conditions under which the exception was granted shall be recorded on the Yamhill County deed records with the applicant paying all fees.*

*5. The city council may waive all or any portion of the city system development charges as it feels is in the best interest of the city. [Ord. 2666, 3-6-07; Ord. 1912, 7-3-78. Code 2001 § 52.12.]*

**Response:** Upon council approval of the hardship request, the city attorney, in coordination with the city engineer and city manager, will prepare a written agreement for signing and recordation by each the property owner for each parcel requesting hardship connection. The written agreement will include, but is not limited to, items such as:

- a. Dedication of public water easements for maintenance access, as needed.

- b. Reimbursement to the city for water meter installation and waterline system repair costs.
- c. Non-remonstrance agreements by the property owner to the sale/transfer of the spring system from the city ownership to ownership by a separate water district or other agency.
- d. Water shall be used for domestic purposes.
- e. Other written agreement items that relate to the expansion of the existing domestic use, future connection to the city well field water supply system, water rate fixed and volume charges, etc.

**13.15.130 Water service for public entities inside urban areas and boundaries.**

*The city council shall have sole authority to grant water service to public entities including, but not limited to, School District 29Jt and Chehalem park and recreation district, for property which is located within the urban growth boundary and/or the urban reserve area of the city. Property to receive service shall be for the public's use and enjoyment. The city council shall have the authority to require the public entity receiving utility service to comply with any conditions the city council may deem appropriate at the time the water service is granted. [Ord. 2483, 7-7-97. Code 2001 § 52.13.]*

**Response:** This code section is not applicable as the properties requesting the hardship are not public agencies nor are they inside urban areas and boundaries.

**13.15.140 Water connections outside city.**

*A. Additional water connections are allowed to residents outside the city that meet the following conditions:*

- 1. They were in existence as of January 1, 1988, or the property owner had requested a water connection to the property for the purposes of a residence before January 1, 1988, and desires the water connection for the purposes of establishing a residence; and*

**Response:** This code section is not applicable as the properties requesting the hardship were not connected to a water system.

- 2. They will be served through a water district; and*

**Response:** The connections will be served through the Foothills Water District legacy water system.

- 3. A new agreement between the water district and the city will be established; and*

**Response:** If the hardship request is granted by council, staff will establish a new agreement with Mr. Austin for each of the two properties.

- 4. The properties upon which the residences are located agree to annex to the city at the appropriate time and at the request of the city; and*

**Response:** As previously mentioned, the properties in question are outside of the city limits.



The recorded agreement described in 13.15.120.D.5 above will include a provision that the property annex to the city at the appropriate time and at the request of the city.

*5. The water to be used is for domestic purposes only; and*

**Response:** The recorded agreement described in 13.15.120.D.5 above will include a provision that the water is to be used for domestic purposes only.

*6. The water district makes a joint application with the property owner on which the residence is located for the new water connection.*

**Response:** The joint application for service by the water district and the property owner will be replaced by the recorded agreement described in 13.15.120.D.5 above, if the hardship request is approved by council.

*B. Each water district that desires any new connections will enter into an appropriate agreement between the water district and the city governing the use, connections and maintenance of the water system. The agreement, among other things, may provide for an engineering study for the water district system to assure that the system complies with OAR Chapter 333, concerning public water systems.*

**Response:** Upon approval of the hardship request by council and recordation of agreements described above, the City of Newberg will maintain the system in conformance with State Standards. A part of the recorded agreement described in 13.15.120.D.5 above will include reimbursement to the city for water meter installation and waterline system repair costs.

*C. All system development charges and other charges as provided for in the ordinances of the city shall be applicable to the new connections; provided, however, that the city manager has authority to waive, reduce, or otherwise change the systems development charge to the water district pursuant to the agreement between the water district and the city; and provided further, that in no event will the agreement provide for service development charges less than the charge for in-city connections.*

**Response:** It is requested the system development charges for the two individual meter installations be paid at the time of installation.

*D. This policy shall be in effect regardless of any conflicting provisions of NMC 13.15.010 through 13.15.130. The purpose of this policy is to facilitate the establishment of proper agreements and policing of connections within the water districts. Any provision of NMC 13.15.010 through 13.15.130 that is in conflict with the water policy shall be deemed to have been repealed. Any provision of the sections which can be read to not be in conflict with the water policy shall be enforced. The city wishes that this policy act as an interim policy to facilitate reaching agreement with the water districts it serves. This matter shall be brought back before the city council within six months of the date of passage for review. [Ord. 2264, 6-20-89; Ord. 2247, 10-3-88. Code 2001 § 52.14.]*

**Response:** An interim agreement is not needed in this situation. As a part of council approval of this hardship request, staff will prepare and record written agreements for each of the two properties that will identify the policies and provisions of connecting to the

Exhibit "C"  
to Resolution No. 2013-3062

city system. If for some reason the property owner chooses not to execute the written agreement, staff will return to council to discuss the provisions of the agreement.

# Resolution No. 2013-3062 EXHIBIT D

THIS SPACE RESERVED FOR RECORDERS USE

**AFTER RECORDING RETURN TO:**

City of Newberg  
Engineering Services Department  
PO Box 970 - 414 East First Street  
Newberg, OR 97132  
503.537.1273

**CONTRACT FOR EXTRA-TERRITORIAL PROVISION  
OF WATER SERVICE and CONSENT TO ANNEXATION  
(water service outside the City through the City water system)**

**With Agreement entitled:  
WAIVER OF ONE-YEAR PERIOD AND  
PRESCRIBING THE PERIOD OF TIME  
THAT THE CONSENT OF ANNEX  
SHALL BE EFFECTIVE**

**(ORS 222.173)**

Attached

City Water System

**(ORS 222.115)**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_ 2013 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called "**City**" and owner(s) of the real property, hereinafter described as "**real property**", hereinafter called "**Owner**". This is the accepted agreement.

## RECITALS

1. **Owner and Real Property.** The **Owner** who is requesting service from the **City** and the **real property**, which is the subject of this connection, are hereinafter described as follows:

a. **Owner(s) Name:** \_\_\_\_\_

**Owner(s) Address:** \_\_\_\_\_

**REAL PROPERTY:**

c. **Property Address:** \_\_\_\_\_

Newberg, Oregon 97132

d. **Tax Lot No.:** \_\_\_\_\_

- e. Legal Description: Recorded in Yamhill County Records, instrument Number \_\_\_\_\_ on \_\_\_\_\_, is hereby referenced and by this reference fully incorporated.
2. **Water System.** The water system to which the real property is to be connected to provide the water service is Newberg Municipal Water System hereinafter called **water system**.
3. **Request.** The **Owner** of the **real property** has requested water service from the **City** and permission to connect to the water system, which will supply **City** water to the **real property** located outside the City limits of the City of Newberg.
4. **Hardship Exceptions.** The City Code at Title V, Chapter 52, provides for water connections outside the City limits under certain hardship conditions.
5. **City Council Approval.** Under certain hardship conditions, the City Council has approved this connection by City Resolution No. xxxxx. The Resolution with attached hardships condition is hereby referenced and by this reference fully incorporated and is on file at the City of Newberg.
6. **Intent to Annex.** The parties agree that the intent is that the property will be annexed into the City as soon as legally possible subject to the time limitations set forth herein.

NOW THEREFORE, The **City** and **Owner** for mutual consideration hereby agree as follows:

1. **Recitals.** The parties agree to the above recitals.
2. **City Obligations.**
- A. The **City** does hereby agree to supply water to the **Owner** through the **water system** in accordance with the City Code.
- B. The **City** consents to the **Owner** connecting to the **water system**.
3. **Owner Obligations.**
- A. The **Owner** hereby agrees to pay the full cost of extending service to the parcel with all services meeting **City** standards.
- B. The **Owner** hereby agrees to pay all required systems development charges prior to connecting.
- C. The **Owner** hereby agrees to pay all water usage charges assessed by the **City** or the **water system**, which are normally assessed on a monthly basis, in accordance with the City Code for water users outside of City limits.
- D. The **Owner** shall abide by all requirements of the City Code.
- E. **Owner** shall take all necessary action to have the property annexed into the City of Newberg upon request by the **City**. All necessary action includes but not limited to the following: filing of application for annexation; payment of

fees for annexation including application fees; and support of annexation application in process before **City**.

4. **Request to Annex.** The **City** shall not request the **Owner** to annex the property until one of the following events occur:
  - A. Current resident no longer resides there.
  - B. There is a change of ownership of the property.
  - C. The property is developed for another use other than single family.Upon any one of the above events occurring, the **City** may request the **Owner** to annex the property.
5. **Consent to Annex.** The **Owner** hereby consents to the annexation of **real property** to the City of Newberg, Oregon. **Owner** hereby agrees to perform all acts required by the City Code of property owners requesting annexation, when annexation is legally possible and is requested by **City** pursuant to agreements. The **Owner** wishes the consent to annexation be considered in any annexation procedure.
6. **Waiver of One-Year period for Consent and Prescribing New Period.** The parties have entered into a separate agreement concerning the time period that the consent to annex will be effective and that agreement is attached as "**Exhibit A**" and by this reference is incorporated. In this agreement, the **Owner** waives the one-year period provided for in ORS 222.273 within which the consent to annex is effective and agrees to a new time period which is as long as the property is receiving extra-territorial services
7. **Limitations on Water Connection.**
  - A. The **Owner** hereby agrees that the water shall be used for domestic purposes only and no water granted under this exception shall be permitted for agriculture use. The water connection can be used only to supply water to a single family residence constructed on the **real property** and will not be placed until the residence is built.
  - B. This water connection is not transferable to any other parcel. If the **real property** is partitioned or subdivided, the water connection shall only be allowed on the parcel containing the original structure.
8. **Covenant and Restriction Running with the Land.**
  - A. This agreement shall be recorded in the Yamhill County Deed Records with **Owner** paying all recording costs and fees.
  - B. All of the terms, covenants, and conditions herein and imposed are for the benefit of the **City** and the **real property** of interest therein.
  - C. This agreement shall be binding upon the **real property** and the successors of interest of the **Owner** and shall act as a covenant and restriction running with the land.
9. **Termination of Agreement.** This agreement shall cease when the **real property** is annexed into the City of Newberg.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_  
\_\_\_\_\_ 2013.

STATE OF OREGON                   )  
  )s.s.  
County of Yamhill                )

**OWNER**

\_\_\_\_\_  
Name

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2013, by

\_\_\_\_\_  
Name

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON                   )  
  )s.s.  
County of Yamhill                )

**OWNER**

\_\_\_\_\_  
Name

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2013, by

\_\_\_\_\_  
Name

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

**CITY OF NEWBERG**

**APPROVED AS TO FORM**

\_\_\_\_\_  
Norma Alley, City Recorder

\_\_\_\_\_  
Terrence D. Mahr, City Attorney

**AFTER RECORDING RETURN TO:**

City of Newberg  
Engineering Services Department  
PO Box 970 - 414 East First Street  
Newberg, OR 97132  
503.537.1273

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***'Exhibit A'***  
***To Contract***

***WAIVER OF ONE-YEAR PERIOD AND  
PRESCRIBING THE PERIOD OF TIME  
THAT THE CONSENT OF ANNEX  
SHALL BE EFFECTIVE (ORS 222.173)***

City Water System  
(ORS 222.115)

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_ 2013 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called "**City**" and owner(s) of the real property, hereinafter described as "**real property**", hereinafter called "**Owner**".

**RECITALS**

1. **Owner and Real Property.** The **Owner** who is requesting service from the **City** and the **real property**, which is the subject of this connection, are hereinafter described as follows:

a. **Owner(s) Name:** \_\_\_\_\_

**Owner(s) Address:** \_\_\_\_\_

\_\_\_\_\_

**REAL PROPERTY:**

c. **Property Address:** \_\_\_\_\_

\_\_\_\_\_

d. **Tax Lot No.:** \_\_\_\_\_

e. **Legal Description:** Recorded in Yamhill County Records, Instrument Number xxxxx on xxxxx, is hereby referenced and by this reference fully incorporated.

2. **Contract.** The **City** and **Owner** have entered into CONTRACT FOR EXTRA-TERRITORIAL PROVISION OF WATER SERVICE and CONSENT TO

ANNEXATION (water service outside the City through the City water system) hereinafter called "**contract**" dated \_\_\_\_\_ 2013 and recorded in Yamhill County records.

3. **Consent To Annex.** The contract contains consent to annex by the owners and the owners wish to waive the one-year period that the consent will be effective and prescribe another period of time for the consent to be effective.

NOW THEREFORE, The **City** and **Owner** for mutual consideration hereby agree as follows:

1. **Waiver.** The owner hereby waives the one-year period provided in ORS 222.173 within which the consent to annex contained in the contract will be effective.
2. **Time Period.** The **Owner** agrees that the time period that the consent to annex shall be effective is for as long as the property is receiving extra-territorial services.
3. **Recording.** This waiver shall be recorded on the Yamhill County records and shall be a covenant and restriction running with the land.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_  
2013.

STATE OF OREGON                 )  
County of Yamhill              ) s.s.  
\_\_\_\_\_ )

**OWNER**

Name \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by

Name

Notary Public for Oregon  
My Commission Expires:

STATE OF OREGON )



County of Yamhill

)s.s.  
)

**OWNER**

Name

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2013, by

Name \_\_\_\_\_

Notary Public for Oregon  
My Commission Expires:

**CITY OF NEWBERG**

**APPROVED AS TO FORM &  
CONTENT**

Daniel Danicic, City Manager

Terrence D. Mahr, City Attorney